

REMARKS

Overview

Claims 1-26 are currently pending in this application. Claims 3, 18, 20, 24-25 have been amended and claim 19 has been cancelled. The Specification has been amended to include changes to page 1 and page 4 for clarification purposes. The drawings of Figures 2 and 4-7 have been amended for clarification and correction. Reference number 52 has been removed from Figure 2. Reference number 69 has been added and reference number 108 has been moved to provide clarification. Figure 5 has been changed to include reference number 69. Figure 6 has been modified to include reference number 60. Figure 7 has been modified to include reference numbers 60 and 69. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

Issues Under 35 U.S.C. § 102

Claims 1, 2, 4, 11, 12, 15, 16, 17, 18, 19, 23, 24,, 25 and 26 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,599,006 to Lin. Claims 18, 23 and 24 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,556,198 to Dickson, Jr., et al. Claims 18, 19, 20, 23 and 24 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,616,673 to Van Guilder. Claims 18, 19, 20, 23, 24 and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,616,674 to Polivka et al. Applicants respectfully transverses the rejections under 35 U.S.C. § 102, and requests reconsideration of the claims.

A. The Law of Anticipation

For a § 102 rejection, a single reference "must disclose each and every element of a claimed invention." Tate Engineering, Inc. v. United States, 477 F.2d 1336, 1342 (Ct. Cl. 1973). Furthermore, each element of the claim and cited reference "must function in substantially the same way to produce substantially the same result." Id. The rejection under 35 U.S.C. § 102 is only proper "when the claimed subject matter is identically disclosed or described in the prior art." Application of Marshall, 579 F.2d 301, 304 (CCPA 1978). Prior art that is only "substantially the same as the claimed invention" likewise cannot show anticipation. Jamesbury Corp. vs. Litton Industries Products, Inc., 756 F.2d 1556, 1560 (Fed. Cir. 1995).

Applying these legal standards, it is virtually impossible for a product that is not the same type of product as the claimed invention to legally anticipate the invention. As explained by the Federal Circuit, "there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." Scripps Clinic & Research Foundation vs. Genentech, Inc., 927 F.2d 1565, 1576 (Fed. Cir 1991), (*emphasis added*). "Any degree of physical difference between the patented product and the prior art, no matter how slight, defeats the claim of anticipation." American Permahedge, Inc. v. Barcana, Inc., 857 F.Supp. 307, 317 (SDNY 1994), *affirmed*, 105 F.3d 1441 (Fed. Cir. 1997).

For anticipation, every element must be present in the prior art reference, "arranged as in the claim." Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 1236 (Fed. Cir. 1989). The identical invention must be shown in its complete detail as contained in the claim. Id.

Therefore, unless a prior art reference is both functionally and physically identical to the claimed invention, it cannot anticipate the claimed invention.

B. The Lin and Dickson Patents Do Not Anticipate

All of the claims are directed towards a stand mixer. The Lin patent is directed to a food processor. Dickson is directed towards a combination blender and dough mixer. Lin and Dickson do not relate to stand mixers. Attached is a Rule 132 Declaration of co-inventor Rob P. Brueckner. As stated in paragraph 3 of the Brueckner Declaration, stand mixers, blenders and food processors are different tools or appliances having different functions. Food processors and blenders are more closely related to one another than a stand mixer. Generally, food processors and blenders cut food by chopping, slicing and dicing. Stand mixers blend food ingredients without cutting. See Brueckner Declaration, paragraph 3.

Therefore, as a matter of law, the Lin and Dickson patents cannot anticipate any of the claims. Therefore, the claims are allowable over Lin and Dickson.

C. Van Guilder and Polivka Do Not Anticipate

Independent claim 18 has been amended to include the limitations of "a rotatable speed selector adapted to incrementally change motor speed" and "a speed indicator including a plurality of speed indicia located on the upper surface of the stand mixer to indicate motor speed." The Van Guilder and Polivka prior art references do not disclose a rotatable speed selector with a plurality of speed indicias adapted to incrementally change the motor speed.

Van Guilder and Polivka each disclose a slidable selector for selecting motor speed, not a rotatable speed selector that incrementally changes the stand mixers motor speed. The Examiner cites a "rotary dial 244" in Polivka, however, the element 244 is simply the head of a shaft 246 that can be turned to adjust the height of the shaft 246 as described at column 8, lines 33-38. The head 244 is located inside the mixer housing, and thus is not normally accessible to a user. The

head 244 is not a rotary dial or a rotatable speed selector. Therefore, claim 18 distinguishes over Van Guilder and Polivka so as to be allowable.

Claim 19 has been cancelled.

Claim 20 depends from claim 18 and should be allowable for the reasons previously mentioned. Further, claim 20 is distinguishable in that Van Guilder and Polivka disclose a single plastic insert that spans the entire length of the slidable speed selector. Claim 20 requires the use of a lens at a plurality of speed locations. This limitation is not found in either Van Guilder or Polivka. Hence, claim 20 is distinguishable from both Van Guilder and Polivka and should be allowed.

Independent claim 24 has been rejected under 35 U.S.C. § 102(b) as being anticipated by Van Guilder or Polivka. Claim 24 has been amended to include the limitations of "a control panel comprising a rotary dial speed selector adapted to incrementally change the motor speed." Claim 24 is allowable for the same reason as independent claim 18, in that neither Van Guilder nor Polivka disclose a rotary dial speed selector adapted to incrementally change the motor speed. Thus, claim 24 is in proper form for allowance.

Issues Under 35 U.S.C. § 103

Claims 3, 10, 13, 14, 20, 21 and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of U.S. Patent No. 5,347,205 to Piland. Claims 21 and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Guilder or Polivka in view of Piland. All the claims rejected under 35 U.S.C. § 103(a) depend from allowable base claims and should be allowed for the reasons set forth for the independent claims. Applicant respectfully traverses the rejections under § 103, and request reconsideration of the claims.

Claim 3 has been rejected under 35 U.S.C. § 103(a) as being obvious over Lin in view of Piland. Claim 3 has been amended to include the limitation that the "plurality of speed indicia about the rotary dial." Neither Lin nor Piland disclose having lens locations positioned about a rotary dial but instead indicate the lens being oriented along a linear line. Applicant respectfully submits that the limitations to claim 3 are not suggested by the combined teaching of Lin and Piland and that therefore claim 3 is in proper form for allowance.

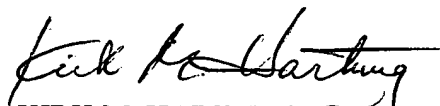
Conclusion

If prosecution of the present application can be facilitated by a telephone interview, the Applicants invite the Examiner to telephone Applicants' attorney of record at the below identified number.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



KIRK M. HARTUNG, Reg. No. 31,021
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 27139

Attorneys of Record

- pw -

Enclosures: Replacement Drawings; Declaration